



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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September 12, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
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Washington, DC 20554

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SEP 12 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Re: Telephone Number Portability
CC Docket No. 95-116
RM 8535

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lisa M. Zaina".

Lisa M. Zaina
General Counsel

No. of Copies rec'd 0411
LISA SCOE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of

Telephone Number Portability

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**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

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COMMENTS OF
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ADVANCEMENT OF SMALL TELEPHONE COMPANIES

I. INTRODUCTION

On July 13, 1995, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking¹ concerning the matter of telephone number portability. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) hereby submits its comments in response to the Commission's NPRM.

OPASTCO is a national trade association of more than 450 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which

¹In the Matter of Telephone Number Portability, CC Docket No. 95-116, Notice of Proposed Rulemaking, 60 FR 39136 (August 1, 1995). (NPRM, Notice)

include both commercial companies and cooperatives, are small and rural local exchange carriers (LECs) serving over 2 million customers. OPASTCO commends the Commission for tackling the complex issue of number portability in advance of the passage of telecommunications reform legislation² that, if enacted, will include a number portability requirement for those carriers to which the interconnection requirements will apply. By requesting comments from interested parties now, the Commission will have ample time to formulate a flexible, unobtrusive policy that is mindful of the vast differences among service providers and end-users throughout the country.

II. A NUMBER PORTABILITY MANDATE WOULD INCREASE COSTS TO SMALL AND RURAL LECs AND THEIR CUSTOMERS WITHOUT SIGNIFICANT BENEFITS

In the NPRM, the Commission seeks comment on whether there should be a regulatory mandate requiring the availability of number portability measures for geographic telephone numbers.³ OPASTCO believes that a number portability mandate would have adverse consequences for small LECs and their rural customers.

²S. 652, 104th Cong., 1st Sess.; H.R. 1555, 104th Cong., 1st Sess.

³Notice at para. 28.

Among them are a potential decrease in subscriber penetration and the prohibitive cost of switching upgrades.

Small and rural LECs, as carriers of last resort, have made an historic commitment to offering quality and affordable service to all of the customers in their service areas, even those located in the most remote regions of the country. These service areas typically include a town center with one or two multiline business customers surrounded by a region that is sparsely populated with residents. The small LEC is able to offer all of its customers affordable service, in part, as a result of access revenues created by its high-volume business customers. The loss of just one such customer is devastating to the small LEC and its remaining subscribers.

A service provider portability requirement in rural service areas would serve to encourage alternative providers without a carrier of last resort obligation to "cherry pick" the LEC's best customers, forcing higher-cost residential subscribers to support stranded investment and lost economies with higher rates.⁴ This,

⁴OPASTCO endorses provisions for final telecommunications reform legislation, currently included in S. 652, that would allow states to require that a competitive carrier offer universal service comparable in all aspects to that offered by the incumbent rural LEC. It may also require that the approval of an application for entry into a rural market served by a rural

in turn, could lead to a decrease in subscriber penetration and the provision of universal service, a trend for which the FCC has shown great concern.⁵ Clearly, forcing competition in rural areas is not an action without ramifications. When developing its number portability policy, the Commission must balance its goal for local competition with the unique circumstances of rural areas and the quest for universal service.

In addition to the damaging effects of competition in rural areas, a number portability requirement would prematurely force small LECs to make expensive switching software upgrades and, in some cases, require complete switch replacement. Most, if not all, number portability solutions will require signaling system 7 (SS7) and advanced intelligent network (AIN) technology. For those rural carriers that have not yet implemented SS7 or AIN, a

LEC must be based on findings that demonstrate such approval is in the public interest and will not have a significant adverse impact on users of telecommunications services or on the provision of universal service. This deference to states is important for fair and beneficial competition in rural areas. See, S. 652 at §104(a)(2).

⁵See, generally, In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, Notice of Proposed Rulemaking, 60 FR 44296 (August 25, 1995).

number portability mandate would require the purchase of a full digital upgrade package.

Even for those rural LECs with digital switches in place, the cost of the software upgrades necessary to provide number portability would be expensive. Software accounts for the vast majority of the cost of a switch. This is due to the bundled properties of a switch where, in order to acquire the most recent switching software, LECs are forced to purchase all of the upgrades that preceded it. For example, if number portability capability is made available on generic software number 19, but the LEC's switch contains only up through generic software number eight, the carrier would be required to purchase generic software numbers nine through 19. An apt analogy would be the necessity of a Windows® operating system in order to operate Windows® based software.

Unfortunately, despite the fact that rural LECs typically have small central offices, software costs basically are the same regardless of the number of lines served. The price of software generics and upgrades typically can be in the hundreds of thousands of dollars and this results in higher costs per line for smaller central offices. Thus, the network modifications necessary for number portability are likely to be financially

difficult for many rural carriers. In addition, the cost of these upgrades may need to be recovered, at least in part, through the LEC's small subscriber base, forcing tariffed rates to increase.

The recent trend of large LECs selling off their rural exchanges is proof positive of the operating cost differential between the provision of service to rural areas and to urban areas. This cost differential is why large LECs often leave rural switches in place for over 25 years. In several instances, the switches in rural exchanges independents purchased from large LECs were almost entirely step-by-step switches. Nonetheless, OPASTCO members are committed to investing in the areas that are being sold. It is ironic that this docket, which would impose costs, was released the same day as the NPRM on CC Docket No. 80-286,⁶ which proposes, inter alia, to eliminate certain cost allocation mechanisms that allow small companies to pay for those costs.⁷

⁶In the Matter Of Amendment of Part 36 of The Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking and Notice of Inquiry, Adopted and Released July 13, 1995.

⁷ The high switching costs involved in offering advanced services such as number portability is why dial equipment minute (DEM) weighting and the Universal Service Fund (USF) support

Small LECs want to provide state-of-the-art service to their customers. As rural specialists in their field, small LECs best understand the unique telecommunications needs of their communities and have wisely invested in the technologies that can meet those particular needs. However, because they have long and sporadic investment cycles which rely heavily on accumulated cash reserves, small carriers make large investments on an infrequent basis. Rural carriers therefore must continually prioritize their network upgrades and future service offerings based on the most immediate needs of their communities.

The high cost of deploying number portability would constrain many small LECs from going forward with other planned network upgrades and new service offerings intended to better serve their customers' needs. For example, a portability mandate

mechanisms continue to be essential for rural LECs to offer modern telecommunications services to their customers at reasonable prices. Without these programs, the local rates necessary to fund the latest technologies and intelligent features would have to rise to a level that cannot be supported by the majority of rural customers. Plant and equipment replacement and upgrades would stagnate and access to the information superhighway would be curtailed. According to OPASTCO's original study Keeping Rural America Connected: Costs and Rates in the Competitive Era, rural subscribers would face an average increase of \$12.84 per month in their local service bills if USF, DEM weighting and related support mechanisms were eliminated.

may delay for many years investment in distance learning, telemedicine centers, and Internet connections, services which are indispensable in developing the rural infrastructure. It is critical for the Commission to avoid placing burdens on small and rural LECs while at the same time taking away their ability to recover the costs associated with such burdens. Doing so would prevent rural customers from reaping the benefits of the information age.

III. THE COMMISSION MUST INCLUDE "EXEMPTION, MODIFICATIONS AND WAIVER" PROVISIONS FOR SMALL AND RURAL LECs IN ANY NUMBER PORTABILITY REQUIREMENT IT MAY PROMULGATE

As part of the numerous interconnection requirements aimed at developing competitive markets, the telecommunications reform legislation currently pending in Congress would generally require LECs to provide service provider portability upon request.⁸

⁸The NPRM correctly points out that S.652 defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." S. 652 at §8(b). The NPRM is incorrect, however, when it states that H.R. 1555 does not define number portability. H.R. 1555, as passed by the House, similarly defines number portability as "...the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when changing from one provider of telecommunications services to another as long as such user continues to be located within the area served by the same

More importantly, both S. 652 and H.R. 1555 temper these requirements with "exemption, modifications and waiver" provisions for rural telephone companies. By including these provisions in the legislation, Congress has acknowledged the deleterious effects that number portability and other interconnection requirements could have on rural areas. Specifically, S. 652, as passed by the Senate, states that the FCC or a State shall, upon petition or its own initiative, waive or modify the Act's interconnection requirements for rural telephone companies and may waive or modify the requirements for LECs with fewer than two percent of the Nation's subscriber lines to the extent that applying them would result in unfair competition, impose a significant adverse impact on users of telecommunications services, be technically infeasible, or otherwise not in the public interest.⁹ Similarly, H.R. 1555, as passed by the House, allows the Commission to modify or waive the equal access and interconnection requirements for any LEC with fewer than 500,000 access lines to the extent that compliance would be unduly economically burdensome or technologically

central office of the carrier from which the user is changing."
[emphasis added] H.R. 1555 at §501(a)(2).

⁹S. 652 at §101(a).

infeasible. In addition, the House bill automatically exempts rural telephone companies from the equal access and interconnection requirements until the company has received a bona fide request for a particular service, element, feature or capability (such as number portability). Following a bona fide request, the State must determine whether the request would be unduly economically burdensome, or technologically infeasible.¹⁰

OPASTCO does not support any type of number portability mandate. However, if the Commission finds it necessary to require number portability, it should use as guideposts the requirements proffered by Congress in the telecommunications reform legislation, regardless of its passage. Specifically, it is absolutely essential that any number portability requirement include "exemption, modifications and waiver" provisions that recognize the detriment such a mandate could lead to in rural areas.

Whatever differences the House and Senate may have regarding other aspects of telecommunications reform, both are clearly in agreement that the competitive inroads engendered through interconnection requirements, while possibly beneficial to urban

¹⁰H.R. 1555 at §101(a).

areas, may not serve the public interest in rural America.

Recognition of this fact is not unheard of in past Commission rulemakings, either. The FCC has consistently determined that applying expanded interconnection, collocation and unbundling requirements to small and rural LECs threatens the development of the information infrastructure in rural areas.¹¹ In addition, the Administration has repeatedly asserted its strong support for policies that would maintain universal service and help insure the rapid deployment of the national information infrastructure

¹¹See, for example, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, 92-440, 7 FCC Rcd 7369, 7398(1992) ("Requiring smaller LECs to offer expanded interconnection might also tax their resources and harm universal service and infrastructure development in rural areas."). Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 93-379, 8 FCC Rcd 7374, 7399-7400(1993) ("There is likely to be substantially less demand for expanded interconnection in Tier 2 service areas. Thus, the majority of the benefits available through expanded interconnection can be achieved while limiting its application to Tier 1 LECs."). MTS and WATS Market Structure, CC Docket 78-72, 85-98, 100 FCC 2d 860, 879 (1985) ("Given the heterogeneity of the stored program control (SPC) equipment now installed in independent telephone company (ITC) end offices, an unconditional requirement for the conversion to equal access could prove excessively expensive in those cases where the demand for conversion is nonexistent or small.").

(NII).¹² By developing a number portability policy that encompasses the guidance of Congress and the Administration, as well as FCC precedent, the Commission will ensure that its number portability requirements do not compromise the quality, scope and affordability of service that rural LECs have traditionally provided their customers.

IV. SMALL AND RURAL LECs THAT MAY BE REQUIRED TO PROVIDE NUMBER PORTABILITY SHOULD BE PERMITTED TO PETITION FOR AN EXTENSION OF TIME FOR COMPLIANCE AND COMPETITORS SHOULD HAVE RECIPROCAL PORTABILITY OBLIGATIONS

OPASTCO recognizes that there might be some small LECs that will not qualify for an exemption, modification or waiver of a possible number portability requirement. In these cases, it is important that the Commission extend to rural carriers the right to petition for a waiver of any deadline for compliance that may be enforced. As explained supra, small LECs tend to have long and sporadic investment cycles. Because commercial or other financing is often not readily available, major investments such as overhauls in switching equipment sometimes have to be financed

¹²On September 15, 1993, the President released an Executive Order establishing the United States Advisory Council on the National Information Infrastructure. Among the issues the Order specifically directs the Council to address are the impact of current and proposed regulatory regimes on the evolution of the NII and universal access. Executive Order 12864.

primarily by internal cash reserves. The deadline that the Commission establishes for LECs to become compliant with a number portability requirement, while reasonable for larger telephone companies, may pose a severe financial hardship on small LECs. By granting small carriers the right to delay on a case-by-case basis, the Commission can determine the validity of the request and make its decision accordingly.

OPASTCO also recommends that, in the interest of regulatory parity, any service provider portability requirement be reciprocal. That is, a competitor that requests service provider portability from an incumbent LEC must also be capable of providing service provider portability. This would afford the incumbent LEC with a level playing field for winning back customers. OPASTCO believes that an incumbent LEC should not be required to provide number portability to a competitor until that provider is capable of the same.

V. THERE IS NO NEED FOR THE COMMISSION TO MANDATE SERVICE AND LOCATION PORTABILITY

OPASTCO does not believe that there are any federal policy objectives served by the nationwide deployment of service and location portability that are important enough to warrant a federal mandate. Unlike service provider portability, service

portability and location portability requirements are not specifically included in telecommunications reform legislation. Any federal policy objectives that would be furthered by a mandate may be at the expense of fundamental public policy goals such as the rapid deployment of the NII to rural areas. The immeasurable cost of a small LEC's compliance with a number portability requirement is the delay of other technologies and advanced services that would bring much needed economic development to rural communities. The Commission should carefully weigh this cost with any federal policy objective it seeks to accomplish through a number portability mandate.

A. THE MARKETPLACE WILL SUFFICIENTLY DRIVE THE WIDESPREAD DEPLOYMENT OF SERVICE PORTABILITY

OPASTCO believes that the deployment of service portability will be driven by the marketplace as local service providers seek to differentiate themselves from their competition through the services they offer. The ability to offer customers integrated services digital network (ISDN) and other advanced services without necessitating a change in their telephone numbers is clearly a strong drawing card for any service provider competing to attract or retain customers. As for LECs that do not face competition, they too will be driven to offer service portability

as a way to encourage customers to subscribe to those new services in which the LECs have made substantial investments. Therefore, there is no need for the FCC to mandate service portability; the marketplace will most likely drive its development.

B. LOCATION PORTABILITY CAN AND SHOULD BE PROVIDED THROUGH NON-GEOGRAPHIC NUMBERS SUCH AS 500 NUMBERS

A mandate to implement location portability, beyond having undesirable effects on rural areas, would raise a host of other complex issues affecting service providers and customers alike. As the Commission itself has recognized, location portability of geographic numbers would require significant modifications to LECs' networks, billing and collecting procedures, and dialing plans.¹³ In addition, consumers would no longer be able to associate telephone numbers with geographic locations.¹⁴ Resolution of these and other issues would be costly and undoubtedly fall primarily on the shoulders of incumbent LECs. In turn, LECs would be forced to pass at least part of this cost onto their customers. OPASTCO highly doubts that many consumers would support the deployment of location portability for

¹³Notice at para. 66.

¹⁴Notice at para. 67.

geographic numbers with the knowledge that it would significantly alter the format of their telephone bills, make it impossible to differentiate between local and toll calls at a glance, and possibly raise the rates on their phone service.

Fortunately, with the advent of personal communications services (PCS) such as 500 number service, location portability is already available to those customers who desire it. With the widespread availability of these services, OPASTCO believes there is no need for the well-established practices and procedures of wireline telephony to be turned on their head. Customers that desire number portability beyond the geographic scope of their wirecenter can simply make a one-time change to a 500 number. If the Commission does not want to use 500 numbers as a permanent location portability solution, another option would be to set aside a group of numbers specifically for this purpose. These solutions provide location portability to those customers who demand it without unnecessarily forcing both LECs and consumers to deal with the unruly issues that would arise from providing location portability for geographic numbers. At the very least, 500 and other non-geographic numbers should be utilized in areas where solutions that involve making customers'

current phone numbers location portable would not be cost effective, such as in rural service areas.

VI. INDUSTRY ORGANIZATIONS SHOULD DEVELOP TECHNICAL GUIDELINES FOR NUMBER PORTABILITY AND THE FCC SHOULD MONITOR THEIR PROGRESS

The NPRM seeks comment on the appropriate role of the Commission in establishing technical and performance standards for number portability.¹⁵ OPASTCO recommends that industry organizations, such as the Alliance for Telecommunications Industry Solutions (ATIS), take the lead in developing workable solutions to number portability and that the FCC monitor their progress. Organizations such as ATIS, whose membership represents a broad cross-section of the industry, are in the best position to tackle the numerous and complex issues surrounding number portability such as economic viability and technical feasibility. Through industry consensus, interoperable technical solutions and performance standards should be selected as non-binding guidelines for those service providers that choose or may be required to provide number portability. If industry organizations are unable to resolve specific issues and request

¹⁵NPRM at para. 34.

guidance, only then should the Commission become directly involved in the development of a number portability solution. In addition, OPASTCO believes that it is still too early in the study of number portability for the Commission to establish deadlines for the resolution of certain issues. However, it would not be unreasonable for the Commission to set dates for industry groups to report back to the FCC on their progress.

VII. INTEREXCHANGE CARRIERS SHOULD BE RESPONSIBLE FOR THE COST OF DATABASE QUERIES FOR INTERLATA CALLS

OPASTCO believes that detailed discussions of the technical issues surrounding number portability, such as call processing, are best left to industry fora. However, OPASTCO firmly believes that whatever call processing scheme is chosen for a long-term solution, interexchange carriers (IXCs) should be responsible for paying the cost of the database query when an interLATA call is made. Particularly if the call processing scenario that is implemented requires the originating or terminating local carrier to perform the database query, it is imperative that IXCs pay those carriers access for the cost of making the "dip" for long distance calls. This cost recovery approach is most appropriate considering that the caller becomes the customer of the IXC for interLATA calls. The IXC bills the customer directly for the

call and collects the proceeds from it. Just as IXC's remit access charges for their use of the LEC network to deliver calls to and from subscribers, so too should they pay for the cost of a database dip for these calls, regardless of the carrier performing the query.

VIII. CONCLUSION

A number portability requirement would not serve the public interest in rural areas. Among the potential adverse impacts, a number portability mandate would threaten rural subscriber penetration, compromise the quality of service that small LECs have historically provided to their rural customers, and jeopardize small LECs' ability to provide their customers with an "on-ramp" to the NII. Recognizing this potential detriment, Congress has included in telecommunications reform legislation "exemption, modifications and waiver" provisions for rural carriers. If the Commission must promulgate a number portability requirement, it is imperative that provisions are included that would implement this congressional language. By permitting small LECs to continue to determine the type of technologies and services they deploy and the pace at which they deploy them, the Commission will help to ensure that rural Americans remain

connected to the network and are afforded access to the services that best serve their unique telecommunications needs.

Respectfully Submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES**

By: Stuart Polikoff
Stuart Polikoff
Regulatory and
Legislative Analyst

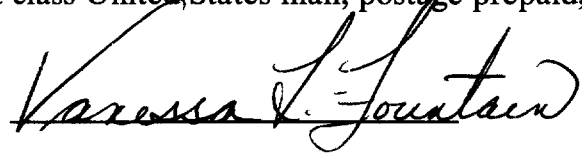
By: Lisa M Zaina
Lisa M. Zaina
General Counsel

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September 12, 1995

CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's comments was sent on this, the 12th day of September, 1995, by first class United States mail, postage prepaid, to those listed on the attached sheet.

A handwritten signature in black ink, reading "Vanessa L. Fountain". The signature is written in a cursive style with a large, sweeping initial "V" and a long, horizontal stroke extending to the right.

Vanessa L. Fountain

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CC Docket No. 95-116
RM 8535

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